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09/919,469	07/31/2001	David G. Sasuga	Sasuga	3474

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Joan H. Pauly  
BARNARD & PAULY, P.S.  
P.O. Box 58888  
Seattle, WA 98138-1888

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Paper No. 13

Application Number: 09/919,469  
Filing Date: July 31, 2001  
Appellant(s): SASUGA, DAVID G.

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Delbert J. Barnard  
For Appellant

**MAILED**

**NOV 15 2003**

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**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 8-14-03.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

No amendment after final has been filed.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 1 and 3 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claim 2 stands or falls by itself because appellant's brief does not include a statement that this claim does not stand or fall by itself and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claims 4-11, 14 and 15 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claim 12 stands or falls by itself because appellant's brief does not include a statement that this claim does not stand or fall by itself and reasons in support thereof. See 37 CFR 1.192(c)(7).

The rejection of claim 13 stands or falls by itself because appellant's brief does not include a statement that this claim does not stand or fall by itself and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

4,057,932	Spencer	11-1977
4,742,644	Groth et al.	05-1988
4,790,105	Wareing et al.	12-1988
5,382,270	Graham et al.	01-1995

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 3 are rejected under 35 U.S.C. 102 (b). This rejection is set forth in prior Office Action, Paper No. 8.

Claims 2 and 4-15 are rejected under 35 U.S.C. 103 (a). This rejection is set forth in prior Office Action, Paper No. 8.

**(11) *Response to Argument***

Regarding claims 1 and 4, the Spencer reference US 4057932 does disclose growing plants on a growing medium to a seedling stage and then placing the medium in the space in the tray as seen in figure 15 and column 10 lines 58-68 and column 11 lines 1-8. Further, the Spencer reference does disclose a height dimension being such that a top surface of the growing medium is closely adjacent to the upper edge surface when the medium is placed in the tray – see for example figures 1, 10, 11 and 15 and column 10 lines 58-68 and column 11 lines 1-8 which disclose the growing medium is placed into the container with the growing medium being located adjacent the top end of the container so that the seedling extends upward above the upper edge of the container. Further this is an apparatus claim and the snipping of the stems is not related to the structure of the apparatus and therefore this is functional language.

Regarding claims 2 and 12, the Graham reference US 5382270 and the Spencer reference both disclose containers for plants with the plant extending above and outside of the container and therefore the inventions are related and substituting the seedlings of the Spencer reference with the culinary herbs of Graham et al. would have been obvious to one of ordinary skill in the art since both devices are used for growing plants.

Regarding claims 3 and 8, the claim does not state that the seedlings are to be eaten by humans but merely states that the seedlings are edible and seedlings are inherently edible in that animals of all type such as deer or rodents eat them.

Regarding claims 4 and 14, the Spencer reference does disclose the growing medium is placed in a bottom of the container and then the container is closed with the growing medium in the bottom portion of the container – see for example column 10 lines 58-68 and column 11 lines 1-8.

Regarding claims 5-7 and 11, the Spencer reference is used to disclose the hinge and latch and not the Wareing reference.

Regarding claim 9, the Spencer reference does disclose the container having a top and bottom portion. If the container did not have a top or bottom portion than it would not be a container in that there would be no space between the top and bottom to place an object to be contained.

Regarding claim 10, the Spencer reference does disclose a container with a top and bottom portion and edible seedlings as seen in reference to claims 3,8 and 9 above.

Regarding claim 13, the Groth reference US 4742644 does disclose stacking containers – at 12-16 and each container has a height dimension as seen in figure 1. If the containers did not have a height dimension than they would not be containers in that they would be too thin to contain an object. It would have been obvious to combine the Spencer and Groth references, so as to allow for the containers to be easily transported or stored.

Regarding claim 15, the Spencer reference does disclose the seedlings are grown to the seedling stage before the medium and plants are placed in the bottom portion of the container –

Art Unit: 3643


see for example column 10 lines 58-68 and column 11 lines 1-8 which shows the seedlings are grown and then can be removed and then placed back into the container.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David Parsley  
November 14, 2003

Conferees  
Son Nguyen

Peter Poon 

Joan H. Pauly  
BARNARD & PAULY, P.S.  
P.O. Box 58888  
Seattle, WA 98138-1888